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BOARD OF REGENTS

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FIRST CIRCUIT

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Dkt. 73 MEO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

UNIVERSITY OF HAWAI'I; UNIVERSITY
OF HAWAI'I BOARD OF REGENTS,

Defendants.

CIVIL NO. 1CCV-26-0000569

(Other Civil Action)

**DEFENDANT UNIVERSITY OF
HAWAII'S MEMORANDUM IN
OPPOSITION TO MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS AND ALTERNATIVELY,
FOR LEAVE TO AMEND;
CERTIFICATE OF SERVICE**

[Dkt. 65]

HEARING

Date: October 19, 2026

Time 2:00 P.M.

Judge: The Honorable Karin L. Holma

Trial Date: January 10, 2028

Judge: The Honorable Karin L. Holma

**DEFENDANT UNIVERSITY OF HAWAII'S MEMORANDUM IN
OPPOSITION TO MOTION FOR PARTIAL JUDGMENT ON
THE PLEADINGS AND ALTERNATIVELY, FOR LEAVE TO AMEND**

I. INTRODUCTION

Defendant UNIVERSITY OF HAWAI'I ("University"), by and through its counsel, CARRIE K. S. OKINAGA, University General Counsel, GREG H. TAKASE and JUSTIN M. LUNEY, Associates General Counsel, hereby submits its Memorandum in Opposition to Plaintiff PUBLIC FIRST LAW CENTER's ("Plaintiff") Motion for Partial Judgment on the Pleadings and Alternatively, for Leave to Amend, filed on August 31, 2026 (the "Motion") [Dkt. 65].

Plaintiff's Motion asks this Court to contradict a direct holding of the Hawai'i Supreme Court; proceed with this case concerning public disclosure of executive session minutes, without the individuals—whose privacy interests are at the center of this dispute—before the Court. In *Civil Beat Law Center for the Public Interest v. City & County of Honolulu*, 144 Hawai'i 466, 445 P.3d 47 (2019), the same decision on which Plaintiff builds its motion, the Court held that an individual whose privacy is at issue is a party to be joined if feasible pursuant to Rule 19(a)(2)(A), and it raised that absence sua sponte to protect the individual's due process rights.

To be clear, however, the University is not advocating the Court to require that its President, Wendy Hensel, or any other individual be joined as a necessary party. If the Court believes that there is a path forward without joining the University's employees to the lawsuit, the University is willing to do so. However, the University does not want the case to proceed to final judgment, only for an appellate court to remand for failure to join certain parties.

The Court may also choose an easier path. Because Plaintiff have not met its burden based on the pleadings to show that its lawsuit does not implicate the privacy interests of the two presidential candidates and Senior Advisor to the President, the Court may simply deny Plaintiff's Motion.

II. FACTUAL BACKGROUND

Plaintiff's Complaint seeks, among other relief, an order compelling disclosure of three executive sessions of its Board of Regents concerning the hiring of the University President and Senior Advisor to the University of Hawai'i President. On October 16 and 17, 2024, the Board of Regents entered into executive session pursuant to HRS § 92-5(a)(2) to consider the hire of the University President, anticipating that matters affecting both presidential candidates' privacy interests would be involved, as well as the privacy interests of references and the community who chose to submit confidential feedback regarding the candidates, as well as HRS § 92-5(a)(4), as it anticipated the necessity to consult with the board's attorney on powers, duties, privileges, immunities and liabilities. Dkt. 47 (UH's Answer) at 5-6, ¶¶ 22-23.

In the University's Seventh Affirmative Defense, it asserted that that Plaintiff has failed to properly join the two presidential candidates and Senior Advisor to the UH President, and that the Hawai'i Supreme Court "recognized that individuals whose privacy interests are implicated by Sunshine law claims *may* be indispensable parties." Dkt. 47 at 15-16, ¶ 152 (emphasis added).

III. LEGAL STANDARD

The University agrees that on a Rule 12(c) motion, "the court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Ruf v. Honolulu Police Dep't*, 89 Hawai'i 315, 319, 972 P.2d 1081, 1085 (1999).

IV. ARGUMENT

A. *Civil Beat* Forecloses Judgment on the Pleadings.

Rule 19 requires a two-step analysis. First, the court determines whether an absent person should be joined if feasible under Rule 19(a). Second, if a person that meets the requirements of subsection (a) cannot be made a party, the Court turns to subsection (b) to decide whether the action may still proceed among the parties before it or be dismissed. If a nonparty is “indispensable” the action must be dismissed. Haw. R. Civ. P. 19(a)-(b).

Civil Beat applied this framework to facts that cannot be meaningfully distinguished from this case. There, as here, the plaintiff was a public-interest organization suing a government body under the Sunshine Law to compel release of “audio recordings and minutes” of executive-session meetings concerning an individual’s personnel matter. *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu*, 144 Haw. 466, 445 P.3d 47 (2019). The Court held that the individual whose privacy was at issue is a party to be joined if feasible pursuant to Rule 19(a)(2)(A), reasoning that the counts “directly concern whether [he] had a legitimate privacy interest” and that, because “this case concerns the subject of [his] privacy, he would appear to have ‘an interest relating to the subject of the action.’” *Id.* The Court further held that “as a practical matter,” the individual’s interests “may be impaired or impeded by the disposition of [the counts] in his absence,” because “the public release of these details may impede attempts to keep this information private.” *Id.* So significant was the absence of the affected individual that the Court raised the issue sua sponte “to ensure due process in the proceedings on remand,” and instructed the circuit court to “order [him] to be joined as a party” before reaching the merits. *Id.*

There is some reason to distinguish *Civil Beat* from the instant case. There, the “Commission voted in executive session to approve a retirement agreement with [the former police chief] Kealoha[,]” and the plaintiff’s complaint sought injunctive relief, including *voiding*

final action taken by the Commission. *Id.* at 471-72, 445 P.3d at 52-53. Here, Plaintiff specifically states that it is not seeking to void any final action. Dkt. 1 at 3, ¶ 13. Nor could it, because the action was not filed within the statutory period. *See* HRS § 92-11. However, *Civil Beat* specifically concerned the individual’s “legitimate privacy interest at stake in the Commission’s discussions about the Target Letter and his retirement” and that because the case “concerned the subject of Kealoha’s privacy” he appeared to have “an interest relating to the subject of the action.” *Id.* at 485, 445 P.3d at 66.

B. Plaintiff Cannot Meet the 12(c) Standard Because Whether Individuals Hold a Privacy Interest is a Disputed Fact that Cannot be Resolved on the Pleadings.

Public First’s motion rests on a flawed premise: that HRS § 92-5(a) only protects “constitutionally protected information” and that because any such information could be withheld through redaction, the individuals impacted by the release of the executive session minutes have no interest in the suit and are not necessary parties. Dkt. 65 at 6-7. The pleadings foreclose Plaintiff’s argument that the individuals do not have a privacy interest in the executive session minutes. First, the statute itself, HRS § 92-5(a)(2), expressly states that a board may hold an executive session “[t]o consider the hire, evaluation, dismissal, or discipline of an officer or employee . . . , where consideration of matters affecting privacy will be involved” The parties do not dispute that the Board of Regents entered executive session pursuant to this section. Dkt. 1 at 4-5, ¶ 23, ¶ 25. Second, the University has asserted in its answer that the Plaintiff’s demand “seeks information protected by Article I, Section 6 of the Hawai‘i Constitution and Hawai‘i law.” Dkt. 47 at 16, ¶ 154. The question of what is constitutionally protected is a merits question that the Court cannot resolve on a motion for judgment on the pleadings. Third, the University’s Answer pleads that both presidential candidates “have asserted that their respective privacy interests must be protected, as allowed by HRS section 92-

5(a)(2), and that the minutes of the October 16 and October 17, 2024 meetings should not be disclosed.” Dkt. 47 at 6, ¶ 26.

V. CONCLUSION

Because whether the individuals involved hold legitimate privacy interests to the executive session minutes is disputed by the parties, and as that fact-intensive question must be viewed in the University’s favor as the non-moving party, Plaintiff cannot show it is entitled to judgment as a matter of law. The University requests the Court deny Plaintiff’s Motion.

DATED: Honolulu, Hawai‘i, October 9, 2026.

/s/ Justin M. Luney
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GREG H. TAKASE
JUSTIN M. LUNEY
Associates General Counsel

Attorneys for Defendant
UNIVERSITY OF HAWAI‘I

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PUBLIC FIRST LAW CENTER,

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UNIVERSITY OF HAWAI'I; UNIVERSITY
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(Other Civil Action)

CERTIFICATE OF SERVICE

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I hereby certify that a true and correct copy of the foregoing document was duly served at the following via the Judiciary Electronic Filing and Service System on the date indicated below:

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DATED: Honolulu, Hawai'i, October 9, 2026.

/s/ Justin M. Luney
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